


**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: ENGINEERING DEPARTMENT/TRAFFIC DIVISION

AGENDA DATE: December 7, 2004

CONTACT PERSON/PHONE:  TED MARQUEZ/ 541-4035

DISTRICT(S) AFFECTED:  1-Susan Austin

CITY CLERK DEPT.
04 NOV 29 AM 11:57

SUBJECT: RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be Authorized to sign an Agreement between the CITY OF EL PASO and EP PARK HILLS II, LTD. for the landscaping and maintenance of the street medians in the Park Hills V Subdivision, El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

The Grantee is developing Park Hills Unit Five (residential subdivision) and Proposed to Landscape and maintain the medians within Park Hills Unit four Subdivision; and the City is interested in landscaping and maintenance of such medians found with the residential subdivisions of the City of El Paso; and the Grantee is interested in developing community pride through the promotion of a City beautification project.

PRIOR COUNCIL ACTION: NONE

AMOUNT AND SOURCE OF FUNDING: NO COST TO THE City of El Paso

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD:  _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign an Agreement between the CITY OF EL PASO and EP PARK HILLS II, LTD. for the landscaping and maintenance of the street medians in the Park Hills V Subdivision, El Paso, El Paso County, Texas.

ADOPTED THIS _____ DAY OF DECEMBER, 2004.


CITY OF EL PASO:

Joe Wardy, Mayor

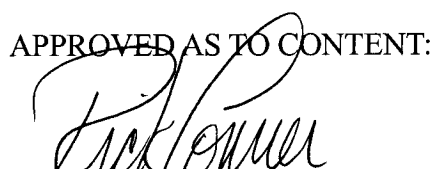
ATTEST:

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:


Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:


Rick Conner, P.E.
City Engineer

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

MEDIAN LANDSCAPING AGREEMENT

NOVEMBER

This Agreement is made this 29th day of **DECEMBER, 2004**, by and between the **CITY OF EL PASO**, hereinafter referred to as "City", and **EP PARK HILLS II, LTD.**, hereinafter referred to as "Grantee."

WHEREAS, Grantee is developing Park Hills Unit Five (residential subdivisions) and proposes to landscape and maintain the medians within Park Hills Unit Five Subdivision; and

WHEREAS, the City is interested in the landscaping and maintenance of such medians found within the residential subdivisions of the City of El Paso; and

WHEREAS, the Grantee is interested in developing community pride through the promotion of a City beautification project; and

WHEREAS, it is of mutual advantage to the City and the Grantee to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. DESCRIPTION. The City grants to the Grantee permission to landscape and maintain all medians found within Park Hills Unit Five Subdivision, El Paso, El Paso County, Texas. Said public right-of-way is shown on the attached maps, marked Attachment "A", which is incorporated herein for all purposes, and is hereinafter collectively referred to as the "Site."

Grantee, at its expense, shall maintain the landscaping and improvements on all street medians located on dedicated streets within the Site. Any modifications or replacements shall, however, be subject to the City ordinances then in effect relating to median improvements.

2. SERVICES. This Agreement shall not permit or be construed to permit any private use of the Site which impairs the function of the street medians for any City purpose, including but not limited to, restrictions to the flow of traffic or visibility of such streets. The Grantee shall perform the following services at the Site:

- a. Maintenance: Generalized maintenance work designed to preserve and enhance the growth of all planting materials, including, but not limited to, removing weeds, trimming around trees, shrubs, and signs; transplanting and rearranging rock material. Grantee shall replace dead or destroyed

landscaping. Grantee shall provide weed control either manually or with substances approved by the City. Grantee shall dispose of trimmed or pruned vegetation in an acceptable manner. Grantee shall not blow or rake leaves, clippings, litter, or debris onto the pavement.

- b. Landscaping: Placement of trees, shrubs and ground cover that are appropriate for the climate and are in accordance with City ordinances. Grantee shall install a low water demand irrigation system at the site at Grantee's own expense; provided, however, that the design of the system must be approved by the City Representative prior to installation. In addition, Grantee shall be totally responsible for all costs associated with the operation of any irrigation system.
- c. Litter Collection: Collect and dispose of refuse and litter in plastic bags.
- d. Pruning: Pruning of all vegetation which restricts the view of signs and safety devices, or creates other sight distance problems, or which creates a hazardous condition or obstruction of vehicular or pedestrian travel upon the public rights-of-way and the disposal of such vegetation.
- e. Landscaping Construction Plans: Grantee shall submit to the City Engineering Department, Traffic Division detailed landscaping plans. Said plans must be approved before any landscaping is initiated. Any turning lanes or driveways to be constructed shall comply with the visibility requirements of the City Engineering Department, Traffic Division; and landscaping which creates a visibility obstruction for vehicles entering or exiting any turning lane or driveway shall be removed or relocated at Grantees' own expense. Grantee shall not construct any additional improvements, or make any additions or alterations without the consent of the City Representative.

3. CONSIDERATION. This Agreement is entered into for and in consideration of Grantee's agreement to landscape and maintain the Site according to Paragraph 2 of this Agreement, in an effort to encourage civic awareness and beautification of the City of El Paso. Said consideration is a valuable consideration to the City.

4. TERM. The term of this Agreement shall be for thirty (30) years from the date of the execution of this Agreement.

5. CITY REPRESENTATIVE. The City Representative shall be the City Engineer, or the City Engineer's designated representative, herein referred to as the "City Representative," who will be authorized to approve all landscaping proposed by Grantee if the proposed project complies with City ordinances and policies, where appropriate. The City Representative will act on behalf of

the City to ascertain that the work is accomplished in accordance with this Agreement and with the guidelines adopted by the City. All communications from Grantee to the City on matters related to this Agreement shall be through the City Representative. Grantee agrees to furnish the City Representative with a copy of each contract Grantee enters into with consultants or subcontractors in furtherance of this Agreement, and specifically, to provide in such contract(s) that the consultants or subcontractors shall not commence performing any services until approval has been granted by the City Representative, when required. Any work performed by a consultant or subcontractor sponsored by Grantee will not under any circumstances relieve Grantee of its responsibilities and obligations under this Agreement.

6. MAINTENANCE PERIOD. Grantee shall maintain the area described in Paragraph 1 of this Agreement for a period of thirty (30) years. Unless otherwise agreed at the end of this Agreement, the City shall have the right, but not the obligation, to assume the responsibility for maintaining the Site or for removing any or all of the installed landscaping at the City's expense.

7. VANDALISM. Grantee shall promptly notify the City Representative of any material damage or destruction of plants, materials, or improvements, which Grantee discovers at the Site.

8. WORK PERFORMANCE. All work performed by Grantee and its employees shall be done in a good and workmanlike manner, satisfactory to the City Representative.

9. EQUIPMENT. All equipment, tools and machinery used in connection with this Agreement shall be supplied by Grantee and shall be maintained in satisfactory working condition. Equipment on the Site shall not be used in any manner that may cause injury to the Site, City property, property of third parties, or any person. All equipment and tools supplied by Grantee and used at the Site must be removed from the Site at the end of each working day unless storage at the Site has been authorized by the City Representative.

10. SAFETY. Grantee shall comply with all applicable laws, ordinances and regulations pertaining to safety or work, and Grantee shall comply with the Texas Manual on Uniform Traffic Control Devices. Grantee shall provide, erect and maintain any necessary barricades, signs and traffic handling devices whenever work is done at the Site. Grantee shall exercise every necessary precaution for the safety of the Site and of the City's property and the protection of any and all persons or property located adjacent to or making passage through the Site. Grantee shall immediately report to the City Representative all accidents arising out of performance of work and resulting in personal injury or damage to property.

11. WORK SCHEDULE. The City Representative has the right to request that a schedule be submitted as to when work will be done at the Site. In addition, the City Representative has the right to request that the scheduled maintenance of the Site be changed to accommodate any planned City activities at or near the Site. Grantee should make every effort to accommodate the scheduled change. Grantee shall provide the City Representative, upon written request, with a monthly work schedule for the scheduled maintenance of the Site.

12. **TERMINATION.** In the event Grantee fails or refuses, after written notice, to maintain the Site in a condition and appearance reasonably acceptable to the City, and after ten (10) consecutive calendar days to cure, the City shall have the option of terminating this Agreement. In addition, the City reserves the right to terminate this Agreement at any time upon thirty (30) days written notice to the Grantee when the City determines that said Agreement is no longer in the best interest of the general public. Upon termination of this Agreement, the City shall have the right to assume the responsibility for maintaining the Site or removing any or all of the installed landscaping and the Grantee will not be entitled to any reimbursement for any improvements.

13. **LEGAL RELATIONSHIP.** Grantee is an independent contractor and nothing herein shall be construed as creating the relationship of employer and employee or agent between the parties. Grantee shall not be entitled to any of the benefits established for City employees nor be covered by the City's Worker's Compensation Program. All of the services required hereunder will be performed by agents of Grantee, and all persons engaged in the work shall be fully qualified to perform the work.

14. **INDEMNITY.** Grantee hereby agrees to indemnify, defend and hold the City harmless from any and all demands, claims, causes of action, or losses for personal injury, property damage or death caused by or arising out of Grantee's obligations under this agreement, including, but not limited to, negligent or allegedly negligent acts or omissions on the part of Grantee, or claims, demands, causes of action or losses from personal injury, property damage or death caused by or arising from failure to landscape the Site in accordance with the approved plans and specifications. Grantee hereby acknowledges that it shall be responsible to all parties for its respective acts or omissions and that the City shall in no way be responsible therefore.

15. **INSURANCE.** Grantee shall not commence work under this Agreement until Grantee has obtained all the insurance required under this section and such insurance has been approved by the City. Grantee shall promptly, before utilizing the property subject to this Agreement, provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per person, and Five Hundred Thousand Dollars (\$500,000) for two or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand Dollars (\$100,000) for property damage growing out of any one accident or other cause. The minimum amounts specified in this Agreement do not relieve Grantee of its obligation to indemnify and hold the City harmless under the Agreement. Grantee shall furnish the City with certificates showing the type, amount, class or operations covered, effective dates and date of expiration of policies. The policies shall be in a form acceptable to the City. The City shall be named as an additional insured on all policies. Grantee shall file a copy of the policies or certificates of insurance with the City. The policy shall provide that it cannot be canceled or the amount of coverage reduced without thirty (30) days written notice to the City.

16. DISCRIMINATION. Grantee, its officers, agents, servants, employees, volunteers, and third parties will not on account of race, color, religion, sex, or national origin, permit or allow any discrimination in the work done pursuant to this Agreement.

17. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and no amendment, modification or alteration of the terms shall be binding unless the same is in writing dated subsequent to the date hereof and duly executed by the parties hereto.

18. ASSIGNMENT.

- a. Nothing herein shall grant any real property interest to Grantee nor give rise to any vested right in Grantee, its assigns or successors in title; neither shall Grantee, its assigns or successors in title have a cause of action for damages upon revocation or termination of this Agreement.
- b. This Agreement is conditioned on Grantee executing a covenant running with the land, binding its assigns and successors in interest to hold the City harmless from all claims and causes of action for death, personal injury and property damage arising from its use of the Site as permitted under this Agreement.
- c. This Agreement is further conditioned on Grantee executing a contract binding assigns and successors in interest, to install and maintain landscaping improvements and for related utility costs at the Site during the term of the Agreement.
- d. This Agreement may be assigned to and assumed totally by one or more homeowners' association of the owners of lots in Park Hills Five Subdivision, as provided for in the Declaration of Covenants, Conditions, and Restrictions applicable to Grantee. The assignment and assumption of this Agreement shall not become effective until such association shall send written notice of the assignment and assumption, signed by Grantee and a representative of such association, to the City Representative, who will forward the request to the City Council. This Agreement shall not be assigned without the prior written consent of the City Council. Such consent shall not be unreasonably withheld. Such assignment shall be conditioned on the homeowners' association assuming all duties and obligations under this Agreement, including liability for Grantee's construction and maintenance obligations regarding the subject medians. Upon City Council approval of the assignment to the homeowners' association, Grantee shall be released from any further duties or obligations under this Agreement.

19. COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES. Grantee agrees to comply with all applicable laws, regulations and ordinances applicable to this Agreement.

20. BINDING AGREEMENT. The individual signing this Agreement acknowledges that he/she is authorized to do so and further warrants that he/she is authorized to commit and bind Grantee to the terms and conditions of this Agreement.

21. NOTICES. All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
ATTN: City Engineer
2 Civic Center Plaza, 4th Floor
El Paso, Texas 79901-1196

City of El Paso
ATTN: Mayor
2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

EP Park Hills II, Ltd.
c/o Doug Schwartz
1790 Lee Trevino Drive, Suite 601
El Paso, Texas 79936

or to such other addresses as the parties may designate in writing from time to time.

(SIGNATURES BEGIN ON NEXT PAGE)

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

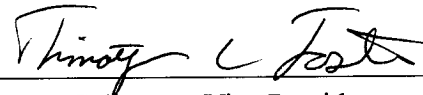
THE CITY OF EL PASO:

Joe Wardy, Mayor

ATTEST:

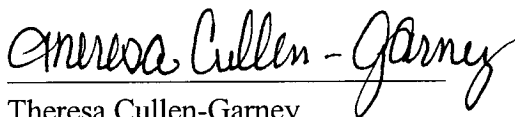
Richarda Duffy Momsen
City Clerk

EP PARK HILLS II, LTD.
By: EP Park Hills, Inc.
Its General Partner



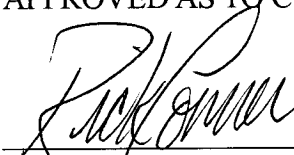
~~Doug Schwartz~~, Vice President
Timothy C. Foster,

APPROVED AS TO FORM:



Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:



Rick Conner, P.E.
City Engineer



(ACKNOWLEDGEMENTS BEGIN ON NEXT PAGE)

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

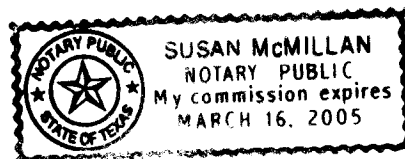
This instrument was acknowledged before me on the _____ day of _____, 2004, by _____, as **Mayor of the City of El Paso, Texas.**

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

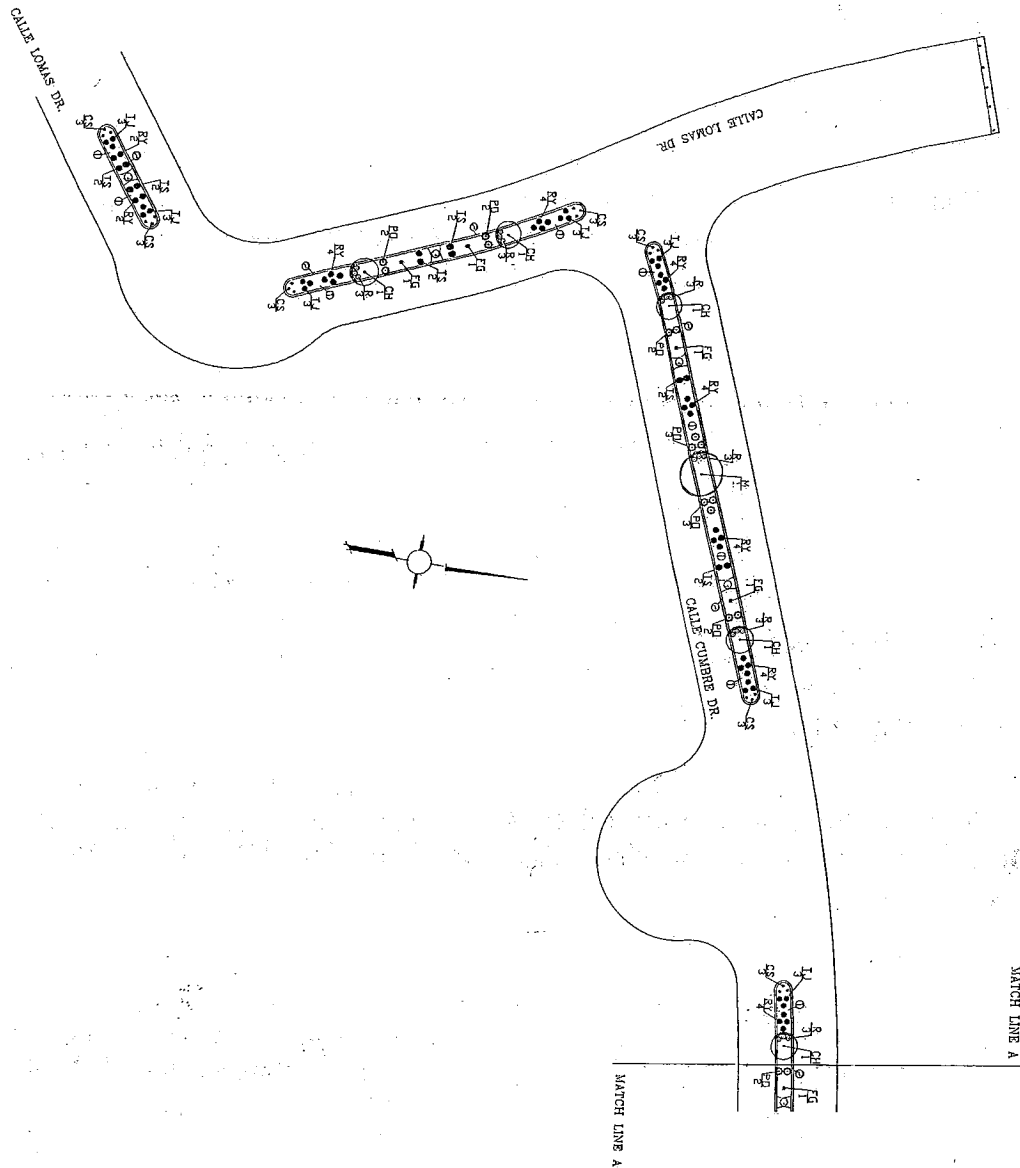
This instrument was acknowledged before me on the 29th day of November, 2004, by **Doug Schwartz**, as **Vice President of EP Park Hills, Inc., General Partner of EP Park Hills II, Ltd.** Timothy C. Foster

Susan McMillan
Notary Public, State of Texas



Attachment "A"

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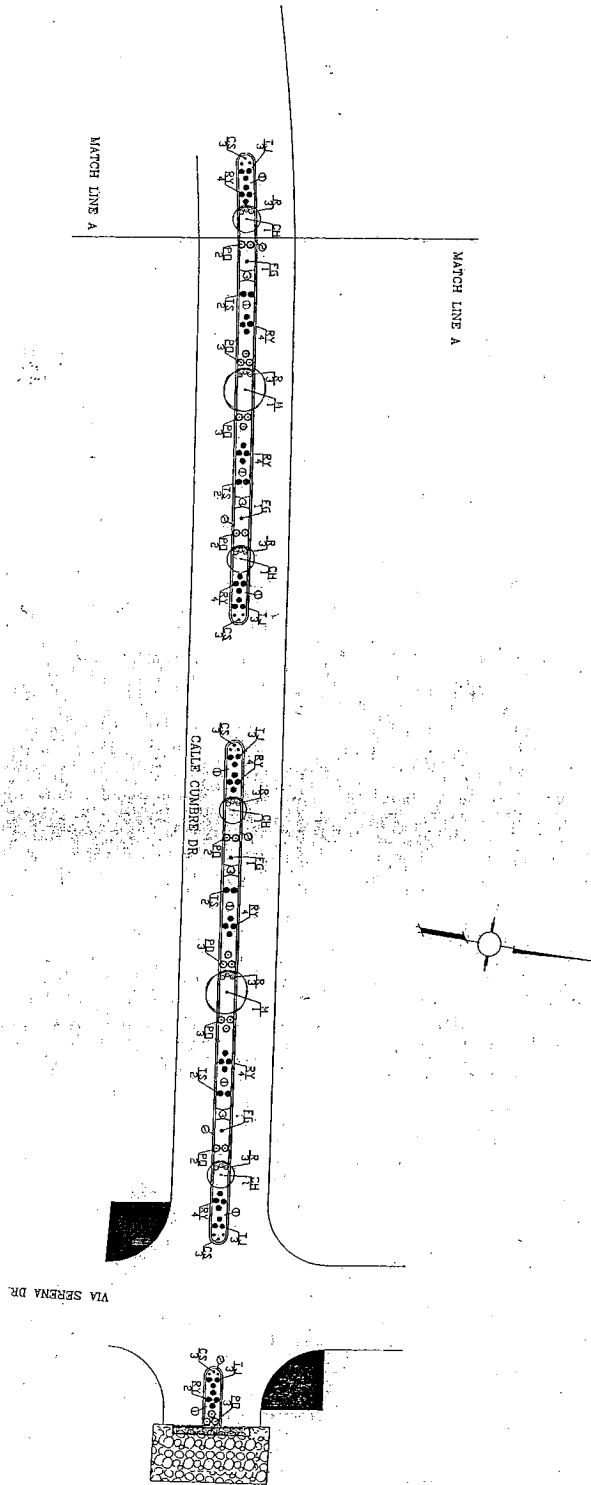
6 APR 04
1:30
MAC
TX3633
1 OF 5

PARK HILLS UNIT 5 MEDIANS
LANDSCAPE PLAN
Southwest Land Development Services, Inc.
1790 Lee Trevino Ste. 601
El Paso, TX 79936 (915) 592-0290

MASTRO
Lawn & Tree Serv.
447 Beckman Circle SW
El Paso, TX 79901

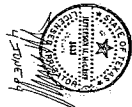
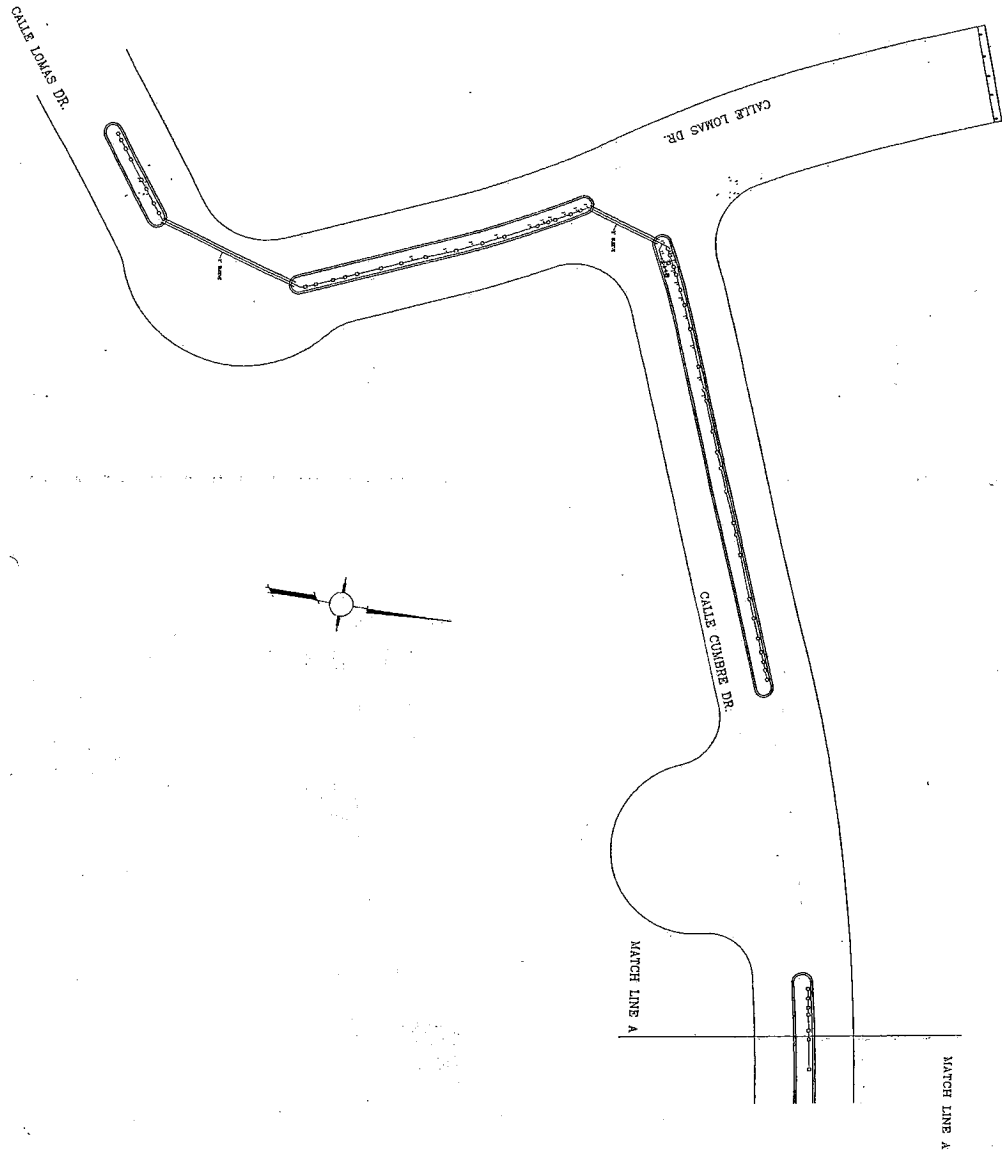
Attachment "A"

Page 2 of 5



Attachment "A"

Page 3 of 5



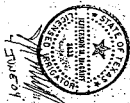
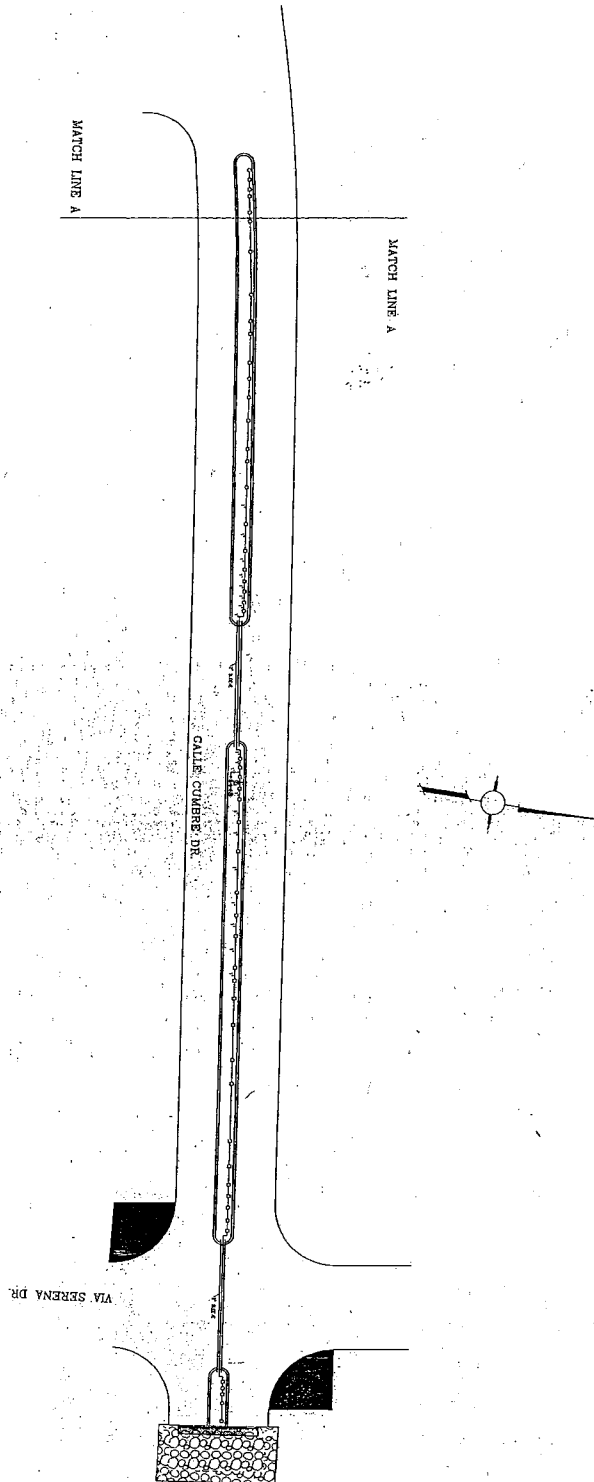
6 APR 04
1:30P
JHAC
TX3633
3 OF 5

PARK HILLS UNIT 5 MEDIANS
IRRIGATION PLAN
Southwest Land Development Services, Inc.
1790 Lee Trevino Ste. 601
El Paso, TX 79936 (915) 592-0290



Attachment "A"

Page 4 of 5



5 APR 04
1:30
JHAC
TX3533
4 OF 5

PARK HILLS UNIT 5 MEDIANS
IRRIGATION PLAN
Southwest Land Development Services, Inc.
1790 Lee Trevino Ste. 601
El Paso, TX 79936 (915) 592-0290



PLANT LEGEND			
KEY	COMMON NAME	BOTANICAL NAME	SIZE & DESCRIPTION
CH	CHITAPA	CATALPA x CHILOPSIS	2'-2 1/2" CAL. 10'-12" HGT. B. & B.
M	MESQUITE	PROSOPIS GLANDULOSA	2'-2 1/2" CAL. 10'-12" HGT. B. & B.
CS	CHERRY SAGE	SALVIA GREGGII	5 GAL. 18"-24" HGT.
R	ROSEMARY	ROSMARINUS OFFICINALIS	5 GAL. 18"-24" HGT.
TJ	TAM JUMPER	JUMPERUS TAHARISCIFOLIA	5 GAL. 18"-24" HGT.
RY	RED YUCCA	HESPERALOE PARVIFLORA	5 GAL. 18"-24" HGT.
FG	PURPLE FOUNTAIN GRASS	PENNISETUM SETACEUM	5 GAL. 18"-24" HGT.
TS	TEXAS SAGE	LEUCOPHYLLUM FRUTESCENS	5 GAL. 18"-24" HGT.
PO	PETITE OLEANDER	NERIUM OLEANDER "PETITE PINK"	5 GAL. 18"-24" HGT.

IRRIGATION LEGEND	
	3/4" FIBCO 825-A RPA w/ EZ-1 ENCLOSURE
	1" RAINBIRD PEB SERIES REMOTE CONTROL VALVE
	5/8" WATER METER
	DRIP EMITTER, RAINBIRD 5 OUTLET EMITTER, 20PH, WITH CAPILLARY TUBING ON THREADED ADAPTERS WITH EDC.V.S./STEAKS INSTALL 2 EMITTERS PER SHRUB AND 6 PER TREE AND ENCLOSE IN ACCESS SLEEVE
	WYE FILTER/PRESSURE REGULATOR ASSEMBLY
	RAINBIRD T80S 1 STATION BATTERY OPERATED CONTROLLER
	LATERAL PIPE, PVC, CLASS 200, SIZED IN PLAN (UNSIZE PIPE - 3/4")

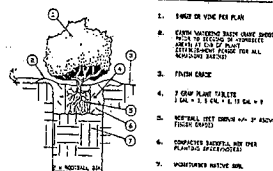
NOTE: IRRIGATION IS REGULATED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, P.O. BOX 13087, AUSTIN, TEXAS 78711-3087, (512) 239-6719

GENERAL NOTES

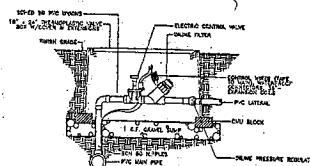
- THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION OF ALL EXISTING AND PROPOSED UTILITIES, AND ALL SITE CONDITIONS PRIOR TO BEGINNING CONSTRUCTION. ANY DAMAGE CAUSED BY THE CONTRACTOR SHALL BE REPAIRED OR REPLACED AT NO ADDITIONAL COST TO THE OWNER.
- LOCATE ALL HEADS AND VALVES AWAY FROM LOW SPOTS OR AREAS OF DRAINAGE FLOW.
- 24V ELECTRIC CONTROL WIRE (#14S) AND COUNTER GROUND (#10S) SHALL BE DIRECT BURIAL, COLOR CODED, AND ALL SPLICES/CONNECTIONS SHALL BE WATERPROOFED. PROVIDE EXPANSION COILS AT ALL VALVES AND 200' ON CENTER MAXIMUM.
- MAINTAIN 4" MINIMUM CLEARANCE BETWEEN PIPE RUNNING IN THE SAME TRENCH. CONTROL WIRE SHALL ALWAYS BE TO THE SIDE AND BELOW THE TOP OF THE PIPE RUNNING IN THE SAME TRENCH.
- ALL PIPING/WIRING RUNNING BENEATH PAVED SURFACES (DRIVES, WALKS, ETC.) SHALL BE INSTALLED IN CLASS 150 PVC SLEEVES. SLEEVES SHALL BE OF THE SIZE SO THAT THE INSIDE DIAMETER OF THE SLEEVE IS 1" GREATER THAN THE COMBINED OUTER DIAMETER OF ALL ITEMS INSTALLED IN THE SLEEVES.
- THE CONTRACTOR SHALL FINE TUNE AND ADJUST THE IRRIGATION SYSTEM SO THAT NO WATER/SPRAY WILL RUN ONTO THE STREET, WALKS, OR HIT ANY BUILDING, WALLS, ETC. THIS SHALL INCLUDE ADJUSTING HEADS, NOZZLES, SPRAY ARCS, & RADII, ETC.
- THE CONTRACTOR SHALL PROVIDE THE OWNER WITH AS-BUILT DRAWINGS ON 1/4" SCALE PRIOR TO APPROVAL OF FINAL PAYMENT.

LEGEND

- 3/4" Franklin Red Rock Surfacing: 3" thick layer, w/ underlayment
 - 2' x 4' Franklin Red Rock Surfacing: Solid layer, w/ underlayment
 - 1' x 3' River Rock Surfacing: Solid layer, w/ underlayment
- Landscape Boulders: Large size as graphically shown

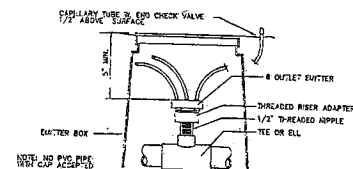


SHRUB PLANTING



ELECTRIC CONTROL VALVE W/ FILTER DETAIL

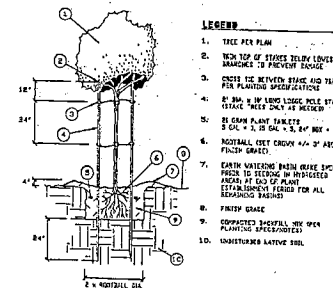
NOT TO SCALE



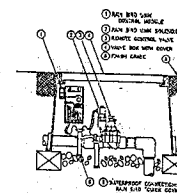
DRIP EMITTERS/CAPILLARY TUBING DETAIL

LANDSCAPE ORDINANCE		
TOTAL REQUIRED LANDSCAPE AREA: 1015' x 10'	10150 SQ. FT.	
PLANT QUANTITIES	REQUIRED	PROPOSED
QTY. OF TREES	11	11
QTY. OF 5 GAL. SHRUBS	203	226
QTY. OF 1 GAL. SHRUBS/GROUND COVER	101	0

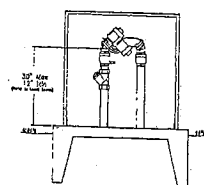
SUBSTITUTE 21-5 GAL. SHRUBS FOR 101-1 GAL. SHRUBS



TREE PLANTING



UNIK SYSTEM



FIBCO MODEL 825A
Pressure Pressure Assembly
Standard Configuration
Quincy Pressure Protection Institution



PARK HILLS UNIT 5 MEDIANS
DETAIL SHEET

Southwest Land Development Services, Inc.
1790 Lee Trevino Ste. 601
El Paso, TX 79936 (915) 592-0290

5 APR 04
NO SCALE
JMAC
TX3633
5 OF 5

